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**Apartado 0819-06676, Panamá, República de Panamá**

## **TERMS AND CONDITIONS OF SALE**

### **BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS**

Any order accepted by Seller is accepted with the understanding that Buyer assents to the terms and conditions set forth in this Quotation, regardless of the form or terms of Buyer's order. This document constitutes the terms of agreement in their entirety between Buyer and Seller with respect to any order Buyer places with Seller. Any additional or different terms stated in any purchase order or other document which Buyer presents to Seller shall be considered material alterations, will be of no binding effect and are hereby objected to and rejected. No course of dealing, usage of trade or course of performance will be relevant to, supplement or explain any terms used herein.

### **PRICES; TERMS**

Unless otherwise stated, quoted prices are those in effect at the time of quotation and are based on delivery in a single lot. The Goods shall be invoiced at Seller's prices in effect at date of shipment unless otherwise stated in a written quotation or proposal. All prices are subject to increases equal to any additional costs incurred by Seller as a result of any changes in laws, regulations or orders or raw material price increases. Required press proofs will be charged at Seller's current rate for press work.

### **DELIVERY DATE**

Lead times and delivery dates may vary depending on many circumstances. Stated delivery dates are Seller's estimate of the time required to produce Buyer's order. Seller reserves the right to re-adjust shipment schedules. Acceptance by Buyer of the Goods when received waives any claim resulting from a delay. If shipment is delayed by Buyer, Buyer shall pay any costs incurred by Seller for handling, storage and timely processing of Buyer's order as well as demurrage and similar charges, if any.

### **PRODUCT SPECIFICATIONS AND QUALITY**

Prices and delivery schedules are based upon Seller's standard specifications or upon product specifications and quality requirements submitted by Buyer. Any changes to those specifications or requirements will require review and possible adjustment of price and/or delivery schedules, and may result in additional charges for artwork, tooling and other services or items needed to produce the finished product. Any changes in product specifications or quality requirements, and any consequent price changes which are mutually agreed to in writing by Seller and Buyer, shall become part of the contract between the parties and are incorporated herein by this reference.

## **SHIPPING QUANTITIES**

Seller reserves the right to make partial shipments when necessary. Overruns and underruns may occur. Payment shall be due for quantities actually shipped. Buyer must notify Seller of any shortages within 30 days of delivery or be barred from any recovery for shortages.

## **TAXES**

The prices of the Goods and related services do not include any sales, use, excise or other tax, duty or charge now or hereafter imposed by any governmental authority. Buyer agrees to pay or reimburse Seller for the full amount of any such taxes or other charges which Seller is required to pay, with the exception of sales or use taxes where Buyer provides Seller with a valid tax exemption certificate for such Goods.

## **LATE CHARGE FOR DELAYED PAYMENT**

Seller's invoices are due and payable in one installment according to the terms printed on the invoice. If payment in full of any invoice is not made by or before the net due date, Buyer agrees to pay a service charge on the unpaid balance at the lower of one and one-half percent (1½%) per month (i.e. 18% per annum), or the maximum rate permitted by law, from the due date until the invoice and all service charges thereon have been paid in full. If allowed by applicable law, Buyer shall also pay on demand any costs incurred by Seller (including reasonable attorneys' fees and legal expenses) in connection with the collection of any amounts due from Buyer to Seller which are not paid as agreed herein.

## **ARTWORK, TOOLING**

Buyer shall be charged for artwork, printing plates, dies and tooling. All such charges shall be invoiced with the first shipment unless otherwise agreed. Artwork, printing plates, dies and tooling shall remain Seller's property until paid for by Buyer and will be retained for a minimum of two years following the date of shipment of Buyer's latest order requiring the use of that artwork, etc.

## **EXPERIMENTAL WORK**

Experimental work performed at Buyer's request, including but not limited to sketches, drawings, models and engineering, shall be charged at Seller's current rates.

## **FREIGHT, RISK OF LOSS**

Except as otherwise stated herein, delivery of all Goods shall be F.O.B. Seller's plant, with freight charges paid by Buyer. Buyer assumes all risk of loss to the Goods from the time they are delivered to a carrier. Any claim for loss or damage in transit shall be against the carrier only. Method and route of shipment are at the discretion of Seller unless Buyer specifies otherwise. Buyer's right to any freight deductions is conditioned on the surrender of original paid freight bills.

## **CANCELLATION**

Except for a cancellation resulting from a default by Seller, Buyer may not cancel any order without Seller's prior written consent. In such event, Buyer shall pay Seller the contract price for all Goods which have been completed by Seller prior to termination and shall reimburse Seller for Seller's expenses for labor, material, unamortized tooling, overhead and any other commitments made and expenses incurred by Seller to date of cancellation for Goods not yet produced, in accordance with Seller's standard charges therefore. Split deliveries may not be cancelled if Seller has already produced the Goods and they are awaiting delivery.

No cancellation by Buyer for a default by Seller shall be effective until Seller has failed for 30 days from the date it receives written notice of a default to cure such default to Buyer's reasonable satisfaction. Seller may cancel any order in whole or in part if: (i) Buyer breaches any term or condition herein; any material representation made by Buyer to Seller proves to be false or misleading; (iii) Buyer is insolvent; (iv) a case naming Buyer as "debtor" is commenced under any local or international court; (v) Buyer makes an assignment for the benefit of creditors; (vi) a receiver or trustee is appointed for Buyer's property; or (vii) a formal or informal proceeding for the dissolution, liquidation or winding up of affairs of Buyer is commenced.

In the event of any cancellation by Seller for any of the foregoing reasons, Seller shall have the rights, in addition to its other rights, to refuse to deliver Goods and/or perform hereunder, and (b) be reimbursed by Buyer for Seller's expenses for labor, material and overhead incurred by Seller to date of cancellation, in accordance with Seller's standard charges there for.

## **CREDIT REQUIREMENTS**

If Seller determines, at any time in its sole discretion, that the creditworthiness of Buyer or of any person or entity providing credit support for Buyer's obligations hereunder is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any agreement or document supporting Buyer's obligations hereunder, Seller shall have the right, among any other rights provided by law, to declare immediately due and payable any amounts owed by Buyer and suspend or terminate further production, shipment or delivery of any Order until credit arrangements satisfactory to Seller have been established. In such event, Buyer shall provide to Seller such financial information as may be reasonably requested by Seller to establish credit or assure performance.

## **BUYER'S CREDIT STATUS**

All deliveries are subject to continuing approval of Seller's Credit Department. Notwithstanding any provision herein to the contrary, Seller may, in its sole discretion, determine that Buyer's financial condition warrants that Buyer pay for any Goods, in whole or in part, in advance, or at time of delivery on a C.O.D. basis, or in any other manner or with such additional security as Seller believes necessary to assure payment. Notice of such determination will be given to Buyer by Seller prior to delivery.

**FORCE MAJEURE**

Seller shall have no liability hereunder to Buyer or to anyone presenting claims through Buyer for any delays in delivery or any breach, failure or omission on the part of Seller if caused by any law, rule, regulation, order or ruling of any governmental authority; any labor disturbances, riot, fire, flood, accident, delay of common carrier, or act of God; Seller's inability to obtain supplies, raw materials, component parts or services through its regular and usual sources of supply; delays in shipments or deliveries caused by Seller's manufacturers and suppliers; or any other cause beyond Seller's control. Where delivery is to be in installments, delay in delivery of any installment shall not relieve Buyer of its obligations to accept subsequent deliveries.

IN NO CASE SHALL SELLER BE LIABLE TO BUYER, OR TO ANYONE PRESENTING CLAIMS THROUGH BUYER, FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM ANY DELAY IN DELIVERY, OR ANY OTHER BREACH, FAILURE OR OMISSION BY SELLER, REGARDLESS OF THE CAUSE OR NATURE OF SUCH DELAY, BREACH, FAILURE OR OMISSION, AND SELLER'S LIABILITY IN ANY SUCH EVENT SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE GOODS SOLD BY SELLER TO BUYER WITH RESPECT TO WHICH ANY DAMAGES ARE CLAIMED.

**LIMITED WARRANTY**

Seller warrants that the Goods will be free from defects in manufacturing and materials at the time of shipment. Should Buyer feel that any Goods fail to conform to this warranty Buyer must give written notice and a specific description of such nonconformity to Seller's customer service representative within twenty (20) days of delivery or it shall be deemed to have been waived. Seller must be given the opportunity to inspect the Goods alleged to be defective. Seller will, at its option, remedy any nonconformity by reworking any defective Goods, making available reworked or replacement Goods, or by the issuance of a credit for the defective Goods. Replacement of nonconforming Goods means delivering to Buyer conforming Goods. It does not mean or include replacement of any product for which the Goods are a packaging material, and does not include any cost or liability for replacing the replacement Goods in or on any product. THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller's products are sold with the understanding that Buyer will test them under actual conditions of use and be solely responsible to determine the suitability of the product for its intended use. Colors will be duplicated as nearly as possible, but exact duplication is not guaranteed.

THE REMEDIES SET FORTH ABOVE SHALL CONSTITUTE BUYER'S EXCLUSIVE REMEDIES FOR SELLER'S BREACH OF ANY WARRANTY WITH RESPECT TO THE GOODS OR ANY OTHER LIABILITY OF SELLER TO BUYER (OTHER THAN WARRANTIES RELATING TO TITLE AND INFRINGEMENT), INCLUDING ANY ARISING OUT OF THE NEGLIGENCE OF SELLER, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY. ANY WARRANTIES SPECIFICALLY SET FORTH HEREIN, AND ANY LIABILITY OF SELLER FOR ANY BREACH OF WARRANTY, ARE CONDITIONED UPON PROPER STORAGE AND USE OF THE GOODS. IMPROPER STORAGE, HANDLING, ALTERATION OR USE OF THE GOODS WILL VOID ALL WARRANTIES CONTAINED HEREIN.

**LIMITATION OF LIABILITY**

SELLER'S LIABILITY FOR ANY CLAIMS, DAMAGES, LOSSES OR LIABILITIES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OF AN ORDER MADE HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS SOLD PER SUCH ORDER. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR BUYER'S AFFILIATES, EMPLOYEES, REPRESENTATIVES, CUSTOMERS OR AGENTS FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOSS OF REPUTATION OR LABOR COSTS, RESULTING FROM THE USE OF INABILITY TO USE THE GOODS, FROM THE GOODS' INCORPORATION INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT, FROM ANY BREACH OF THIS AGREEMENT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED), CONTRACT, TORT (INCLUDING STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY AND REGARDLESS OF ANY ADVICE OR REPRESENTATION THAT MAY HAVE BEEN RENDERED BY SELLER REGARDING THE GOODS OR SELLER'S PERFORMANCE HEREUNDER.

**CONFIDENTIALITY**

All information furnished by Seller and all information learned or observed about Seller or its operations through the parties' performance hereunder is confidential, and Buyer shall not disclose any such information to any other person or use such information for any purpose other than the fulfillment of its obligations hereunder without Seller's prior written consent.

**ACCEPTANCE OF MERCHANDISE**

The Goods described herein constitute a single commercial unit. The Goods shall be deemed accepted by Buyer when Buyer (i) notifies Seller of acceptance in writing, (ii) uses the Goods or permits use by others, (iii) remits payment for the Goods to Seller, or (iv) fails to notify Seller of rejection within 20 days after Buyer takes possession of the Goods. Buyer may not revoke its acceptance. Any use by Buyer of any part or all of the Goods after any attempted rejection or revocation or acceptance is wrongful against Seller and will constitute acceptance of all of the Goods by Buyer. Goods may not be returned unless authorized by Seller. Returned Goods must be securely packed to reach Seller without damage. Reasonable color variations between color of proofs and delivered Goods shall not be grounds for rejection of Goods.

**STORAGE**

If any Goods are not shipped within 30 days after notification to Buyer that they are ready for shipment, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instructions, Seller may store such Goods at Buyer's risk in a warehouse or yard or upon Seller's premises and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates.

**HAND HOLES**

Buyer agrees to indemnify and hold Seller harmless from claims, suits, liability or damages, including attorneys' fees and legal expenses, arising out of any accident, injury or death from the

use of container access holes or hand holes in lifting, carrying or otherwise moving the container by any party, except to the extent any such accident, injury or death is caused by Seller's negligence in design or manufacture.

### **MODIFICATION OF TERMS AND CONDITIONS**

Except as otherwise expressly set forth herein this document is the final written expression of all of the terms of the agreement between Buyer and Seller with respect to the sale of the Goods. No terms or conditions other than those stated herein, and no written or oral agreement or understanding which in any way purports to waive or modify these terms or conditions, whether made by any agent, representative or salesperson of Seller or contained in Buyer's purchase order, shipping release form or elsewhere, shall be binding on Seller unless agreed to in writing by an authorized representative of Seller.

### **NO WAIVER**

Seller's failure to insist upon performance of any of the terms and conditions set forth herein or to exercise any right hereunder on any one or more occasions shall not be deemed to be a waiver of such terms, conditions or rights, nor shall it be deemed to be a waiver of any other term, condition or right set forth herein.

### **APPLICABLE LAW; SEVERABILITY**

This transaction shall be governed by, and these terms shall be construed and enforced in accordance with, the laws of the Republic of Panama. Seller submits to the jurisdiction of Panamanian courts. All of the provisions of this contract are deemed to be separate and severable. If any provision of this contract is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions hereof.

### **PARTIES, ASSIGNMENT**

As used herein, "Buyer" and "Seller" include their respective heirs, executors, personal representatives, successors and assigns. No right or interest arising under this document shall be assigned by Buyer and no delegation of any obligation owed by Buyer shall be made without the prior written permission of Seller.

### **SUBSEQUENT ORDERS FROM BUYER**

If Buyer should submit subsequent orders (whether oral or written) for additional quantities of the products described herein (and whether such additional orders are at the same or a different price), such additional orders shall be subject to the terms and conditions contained herein. THE TERMS AND CONDITIONS SET FORTH HEREIN WILL GOVERN ALL REORDERS AND ADDITIONAL ORDERS FOR GOODS OF THE KIND DESCRIBED HEREIN. ANY TERMS OR CONDITIONS CONTAINED IN ANY REORDER OR ADDITIONAL ORDER WHICH ARE DIFFERENT FROM OR ADDITIONAL TO THESE TERMS AND CONDITIONS WILL BE OF NO BINDING EFFECT AND ARE HEREBY REJECTED. Seller

reserves the right to make changes in the design or specifications of any of its standard products at any time without notice to Buyer.

## **DISPUTES**

It is the policy of Seller to attempt to settle all disputes through alternative dispute resolution techniques and to use litigation only as a last resort to settle any dispute, except in the case of collection of past-due accounts or when other circumstances dictate that litigation is advisable. Seller has subscribed to the Center for Conciliation and Conflict Resolution (CeCAP) of the Panamanian Chamber of Commerce, Industry and Agriculture. Buyer agrees to make a good faith attempt to make use of alternative dispute resolution before instituting any litigation against Seller which arises out of Buyer's purchase of the Goods.

## **INFRINGEMENT**

Seller will, at its own expense, defend or settle any suits instituted by anyone against Buyer for alleged infringement of any patent relating to products furnished by Seller. In the case of a final award of costs and damages in such a suit, Seller will pay such award, and if the use of Seller's product by Buyer shall be enjoined in such a suit, Seller shall, at its discretion and at its own expense, (a) procure for Buyer the right to use said product, (b) replace the product with a nonfringing product, or (c) refund the purchase price of the product upon return of the product to Seller. Seller will not be responsible for any compromise or settlement made without its written consent.

The foregoing states the entire and exclusive liability of Seller for alleged patent infringement and is in lieu of any statutory warranty relating to infringement. Seller have no obligation whatsoever with respect to patent infringement: (1) if Buyer has modified the allegedly infringing Goods, (2) if the allegedly infringing Goods were not manufactured by Seller, (3) if the allegedly infringing products shall have been made to the specifications of the Buyer or a third party, (4) if such alleged infringement shall consist of the use of Seller's products for purposes other than those for which the same shall have been sold by Seller, or (5) unless the Buyer shall have made all payments then due under this contract for sale, shall have given Seller immediate written notice of the institution of any such suit, shall have transmitted to Seller immediately upon receipt all processes and papers served upon Buyer, shall have permitted Seller through its own counsel, either in the name of Buyer or in the name of Seller, to defend the same, and shall have given all needed information, assistance and authority to enable Seller to do so effectively.

Buyer shall indemnify and hold Seller harmless from and against all claims arising out of alleged infringement of patents, designs, trade secrets, copyrights or trademarks or failure of Goods to conform to any applicable laws with respect to any Goods manufactured or modified to Buyer's specifications.

## **TRADE DESIGNATIONS AND COPYRIGHTS**

Buyer warrants that any trademark, service mark or other trade designation or copyrighted materials Buyer requests Seller to affix to any Goods is owned by Buyer or used with the consent of and according to the requirements of the owner.

**DESIGNACIONES COMERCIALES Y DERECHOS DE AUTOR**

El Comprador garantiza que cualquier marca comercial, marca de servicio u otra designación comercial o material protegido por derechos de autor que el Comprador solicite al Vendedor a colocar en cualquiera de los Bienes es propiedad del Comprador o se utiliza con el consentimiento y de acuerdo con los requisitos del propietario.